IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO. 4423 OF 2007
IN
SPECIAL SUMMARY CIVIL SUIT NO. 150 OF 2006

M/s. RAJYOG DEVELOPERS & ORS. .... PETIIONER
V/S.
MR.SURENDRA PRAKASH SAXENA & OTHERS .... RESPONDENTS

Mr. S.S. Kanetkar for the petitioner
Mr.R.N.Sanghavi for respondent nos. 1 and 2.

CORAM : A.P.DESHPANDE, J.

DATE : 8TH JUNE, 2007.

P.C. :-

1. A discretionary interlocutory order passed by the trial court granting leave to defend the suit subject to the condition of deposit of the amount, is challenged by filing this writ petition. The present petitioners are developer and builder whereas the respondent/plaintiff is the owner of the land. Pursuant to the agreement, the petitioners delivered post dated cheques to the respondent-plaintiff. The cheques could not be honoured as the petitioners intimated the bank not to make the payment. As per the instruction from the petitioners to stop payment, the plaintiff could not receive the amount and hence instituted the summery suit under Order XXXVII of the Civil Procedure Code. On being served with the summons for judgment, the present petitioners applied for leave to defend the suit in the trial court. While granting the leave subject to condition of deposit of amount, the trial court has categorically held that the question raised by the defendant cannot be straightway accepted, and though leave is granted, the same is granted subject to condition. The amount

involved in the suit is Rs.97,500.OO. Perused the order passed by the trial court, the same does not warrant any interference by this court in exercise of writ jurisdiction. In the result, the writ petition deserves to be dismissed and the same is hereby dismissed in limine.

(A.P.DESHPANDE J.)